

**Letter of Findings: 02-20200379  
Indiana Corporate Income Tax  
For The Year 2019**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### **HOLDING**

Business protested the assessment of additional corporate income tax owed. Business had applied net operating losses it acquired in a merger with another company. After review of all the facts in the course of the protest process, the Department has confirmed that Business miscalculated the amount of net operating losses available and was therefore correctly assessed for additional corporate income tax.

### **ISSUE**

#### **I. Corporate Income Tax - Net Operating Losses.**

**Authority:** IC § 6-3-1-3.5; IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); IRC § 172; Income Tax Information Bulletin 116 (July 2018).

Taxpayer argues the Department's assessment of additional corporate income tax plus penalty and interest, due to a recalculation of its available net operating losses, was unwarranted.

### **STATEMENT OF FACTS**

Taxpayer is an out-of-state company doing business in Indiana and other states. In 2012, Taxpayer merged with Company A and acquired its net operating losses, which were accrued from 2008 to 2011.

Taxpayer filed its 2019 corporate income tax return and applied net operating losses carried forward from 2011 and 2018 tax years. Taxpayer believed approximately \$9,800 in net operating losses remained from 2011 (from Company A) and approximately \$9,000 in net operating losses remained from 2018 (from Taxpayer). The Indiana Department of Revenue ("Department") determined Taxpayer incorrectly calculated the amount of net operating losses available. As a result, the Department issued an assessment for the unpaid taxes along with a penalty and interest.

Taxpayer protested the recalculation of the available net operating loss deductions and the resulting assessment, penalty, and interest. An administrative phone hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

#### **I. Corporate Income Tax - Net Operating Losses.**

### **DISCUSSION**

The issue is whether Taxpayer provided sufficient documentation and explanation to establish that the additional tax assessment, penalty, and interest was wrong because the Department miscalculated the amount of net operating losses (NOLs) available to offset the 2019 tax liability.

IC § 6-8.1-5-1(c) states that "[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). An assessment, including Taxpayer's penalty assessment, is therefore presumed valid. A taxpayer must provide documentation explaining and supporting that the Department's position is wrong.

Additionally, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of statute even over an equally reasonable interpretation by another party.'" *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

IC § 6-3-1-3.5 allows Indiana taxpayers to claim NOLs based on the taxpayer's federal net operating loss for a tax year as calculated under Section 172 of the Internal Revenue Code and adjusted for certain modifications required by IC § 6-3-1-3.5.

Income Tax Information Bulletin 116 (July 2018) 20180725 Ind. Reg. 045180312NRA explains:

Notwithstanding the federal changes to net operating losses (generally, 80[percent] of taxable income and an unlimited carryforward period), Indiana will continue to allow net operating losses to be deducted up to 100[percent] of Indiana adjusted gross income. In addition, Indiana will continue to have a 20-year carryforward of net operating losses from a given year. Finally, Indiana will continue to not permit net operating loss carrybacks.

For all taxpayers, the net operating loss calculation will follow the federal net operating loss calculation, with the modifications in [IC 6-3-1-3.5](#) used to increase or decrease the Indiana net operating loss (prior to any apportionment or allocation). However, any deductions under [IC 6-3-2](#) are not permitted in determining net operating losses.

Taxpayer argues the assessment is incorrect and that penalty and interest should be waived. In support, Taxpayer provided an explanation that the Department applied a different NOL carryforward for the 2019 tax year than the NOL calculated by Taxpayer. Taxpayer believes there was a remaining Indiana NOL of approximately \$10,000 to be applied to 2019. Taxpayer also provided a copy of its NOLs calculations for 2008 to 2018.

Per the Department's records, Company A's NOL from 2008 was approximately \$9,200. The majority of the 2008 NOL was applied by Company A to Company A's income tax calculations in 2009, and only \$631 remained to carryforward. In 2010 and 2011, Company A accrued net operating losses of approximately \$38,000 so that it had no Indiana adjusted gross income. Those NOLs were applied by Taxpayer as follows - when Taxpayer merged with Company A in 2012, Taxpayer had Indiana adjusted gross income of approximately \$2,200 for the year. This amount was offset by the remaining \$631 from the 2008 NOL along with a portion of the NOLs accrued in 2010. Similar circumstances occurred in tax years 2013 to 2017 where Taxpayer's Indiana adjusted gross income was consistently offset by acquired NOLs accrued by Company A in 2010 and 2011. As a result, Taxpayer carried forward the final amount of NOLs stemming from Company A in tax year 2017.

In 2018, Taxpayer itself accrued another NOL of approximately \$1,600. Because all previously acquired NOLs from Company A were depleted by tax year 2017, the only NOL available for Taxpayer to carry forward was approximately \$1,600 accrued in 2018. This amount was applied to Taxpayer's taxes in 2019.

A review of the NOL schedule provided by Taxpayer shows a miscalculation on Taxpayer's part stemming from the 2008 NOL of approximately \$9,200 acquired from Company A. Taxpayer's schedule shows this amount was carried forward and applied against Taxpayer's 2011, 2012, and 2013 taxes. However, as previously discussed, the majority of the 2008 NOL was applied in 2009 and only \$631 remained, which was applied to 2012 tax year. When Taxpayer miscalculated how the 2008 NOL was applied, all of its calculations were off for subsequent years, including the amount of NOLs available to carryforward in 2019.

Taxpayer also argues that penalty and interest should be waived. If a taxpayer "incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment." IC § 6-8.1-10-1(a). Interest is calculated on the amount of the deficiency and cannot be waived by the Department. IC § 6-8.1-10-1(b)(3) and (e). Further, a taxpayer that incurs a deficiency due to negligence is subject to a penalty that is ten percent of the tax not paid. IC § 6-8.1-10-2.1(a)(3) and (b)(2). Generally, the Department does not have the authority to waive interest. IC § 6-8.1-10-1(e).

Thus, after considering the documentation provided by Taxpayer, Taxpayer has not shown the Department's assessment, including penalty and interest, is incorrect. Therefore, Taxpayer has not met the burden of proving the proposed assessment is wrong, as required by IC § 6-8.1-5-1(c). Taxpayer's protest is denied.

## FINDING

Taxpayer's protest is denied.

April 21, 2022

*Posted: 06/29/2022 by Legislative Services Agency*  
An [html](#) version of this document.